

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

LEROY FRANCE,

Plaintiff,

v.

CENLAR FSB,

Defendant.

:
:
:
:
:
:
:
:
:
:
:
:

Civil No. _____

NOTICE OF REMOVAL

Pursuant to 28 U.S.C. § 1441, Defendant, Cenlar FSB (“Cenlar”), by and through its undersigned counsel, Stradley Ronon Stevens & Young, LLP, hereby removes to the United States District Court for the District of New Jersey the case styled as Leroy France v. Cenlar FSB, Docket No. MER-L-000128-18, originally filed in the Superior Court of New Jersey, Law Division, Civil Part, Mercer County (“the State Court Action”), and as grounds for removal, states as follows:

Background

1. On January 17, 2018, Plaintiff, Leroy France (“Plaintiff”), commenced an action against Cenlar in the Superior Court of New Jersey, Law Division, Civil Part, Mercer County by filing a Complaint against Cenlar alleging violations of the Telephone Consumer Protection Act, 47 U.S.C. § 227, *et seq.* (“TCPA”). In accordance with 28 U.S.C. § 1446(a), a copy of Plaintiff’s Complaint is attached as Exhibit A.

2. On January 18, 2018, the Superior Court issued a Case Track Assignment Notice. In accordance with 28 U.S.C. § 1446(a), a copy of the Notice is attached as Exhibit B.

3. No further proceedings have occurred in this State Court Action.

4. Defendant has not been served with the Complaint or any other filings in this case, nor does it appear that any proof of service has been filed with the Superior Court.

Timeliness of Removal

5. Defendant files this Notice of Removal prior to service of the Complaint, and therefore, the Notice of Removal is timely pursuant to 28 U.S.C. § 1446(b). Murphy Bros., Inc. v. Michetti Pipe Stringing, Inc., 526 U.S. 344, 347-48, 354 (1999) (holding that actual service of complaint is required to trigger 30-day period for removal); Di Loreto v. Costigan, 351 Fed. App'x 747, 751-52 (3d Cir. 2009) (holding that 30-day removal period begins to run only upon proper service or waiver of service, and that last-served defendant may remove entire action within 30 days of service if all other defendants consent).

Removal Jurisdiction

6. This action is properly removable under 28 U.S.C. § 1441(a) because this Court has original jurisdiction of this case under 28 U.S.C. § 1331, which provides in pertinent part: “The district courts shall have original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States.”

7. Specifically, Plaintiff's Complaint alleges that Cenlar violated the TCPA. Therefore, this is a civil action “arising under the Constitution, laws, or treaties of the United States” pursuant to 28 U.S.C. § 1331, and removal is appropriate pursuant to 28 U.S.C. §§ 1441 and 1446.

8. Plaintiff's Complaint also purports to bring claims under state law for invasion of privacy, negligent infliction of emotional distress, and negligent training and supervision. The Court has supplemental jurisdiction over such claims pursuant to 28 U.S.C. § 1367 because all allegations in the Complaint arise from a common nucleus of operative fact concerning the

telephone calls that Plaintiff allegedly received from Defendant, the alleged manner in which those calls were placed, and the alleged frequency or number of such calls. As such, all allegations form part of the same case or controversy for purposes of 28 U.S.C. § 1367.

9. Removal to this court is proper pursuant to 28 U.S.C. § 1441, as the United States District Court for the District of New Jersey embraces the Superior Court of New Jersey, Law Division, Civil Part, Mercer County, where the State Court Action was filed.

Notice to State Court and Plaintiff

10. Pursuant to 28 U.S.C. § 1446(d), Cenlar is promptly providing written notice of this removal to Plaintiff and will promptly file a Notice of Filing of this Notice of Removal with the Clerk of the Court for the Superior Court of New Jersey, Law Division, Civil Part, Mercer County. A copy of the Notice of Filing of Notice of Removal being filed in Superior Court is attached hereto as Exhibit C.

WHEREFORE, Defendant, Cenlar FSB, hereby removes the State Court Action from the Superior Court of New Jersey, Law Division, Civil Part, Mercer County to this Court.

LOCAL RULE 11.2 CERTIFICATION

I certify that the matter in controversy is not the subject of any other action pending in any court, or of any pending arbitration or administrative proceeding.

Respectfully submitted,

/s/ L. John Vassalotti, III

L. John Vassalotti, III (NJ ID 019972011)
STRADLEY RONON STEVENS & YOUNG, LLP
2005 Market Street, Suite 2600
Philadelphia, PA 19103-7098
Phone: (215) 564-8000
Fax: (215) 564-8120
jvassalotti@stradley.com

*Attorneys for Defendant,
Cenlar FSB*

Dated: February 16, 2018